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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

NO. 308

LESTER G. MADDOX,
Appellant,

v.

GEORGE F. WILLIS, JR., ET AL.,
Appellees.

Jurisdictional Statement

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IN THE

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OCTOBER TERM, 1965

NO.

LESTER G. MADDOX,
Appellant,

v.

GEORGE F. WILLIS, JR., ET AL.,
Appellees.

Jurisdictional Statement

A.

This is an appeal from a final judgment of the United States District Court for the Northern District of Georgia, Atlanta Division, adjudging appellant guilty of civil contempt for violating a permanent injunction issued by that court. Said final judgment of contempt was entered February 5, 1965, but does not appear in official reports. A copy of said order of contempt, together with a copy of the court's findings of fact and conclusions of law are attached hereto. Earlier opinions in the same case are reported in

Willis v. Pickrick Restaurant, 231 F. Supp. 397, and *Willis v. Pickrick Restaurant*, 234 F. Supp. 179.

B.

(i) This suit was filed by the three named plaintiffs, all Negroes, for themselves and for the class consisting of all other Negroes, seeking an injunction restraining The Pickrick, a corporation, and Lester G. Maddox, the Manager of a large restaurant operated by said corporation in the City of Atlanta, from violating Sections 201 and 202 of the Civil Rights Act of 1964 in the operation of said restaurant by refusing to serve Negroes.

The United States was permitted to intervene upon certificate of the Attorney General and filed a "complaint in intervention", seeking the same relief. Following its intervention, the Attorney General filed the certificate required under Section 206 (b) of said act (where the Attorney General initiates the action), to the effect that in the opinion of the Attorney General "the case is of general public importance". The Attorney General also filed a request for a three-judge court, which is also provided for under Section 206 (b), where a proceeding is filed by the Attorney General. Treating the complaint in intervention of the United States in the same light as if the Attorney General had filed the suit initially, Hon. Elbert P. Tuttle, Chief Judge of the Court of Appeals for the Fifth Circuit, designated a three-judge court to hear and determine the case.

After hearing evidence upon the application for a temporary injunction, the three-judge District Court entered and filed an opinion and temporary restraining

order against the corporation and Maddox, as its agent, on July 22, 1964.

On August 13, 1964 the Pickrick Restaurant was closed down by defendant "The Pickrick", a corporation.

On August 20, 1964, the case came on for a hearing before the three-judge District Court upon separate motions of the defendants to dissolve the interlocutory injunction or, in the alternative, to stay the effective date thereof. Upon said hearing the plaintiffs, intervenor, and the defendants having stated in open court that no further evidence would be tendered by either party, and all parties having requested that the matter be treated as a hearing on the petition for final permanent injunction, the court on September 4, 1964 entered its order denying the motions of defendants, and also entered its order granting a final permanent injunction.

On September 28, 1964, defendant Lester G. Maddox was the sole owner of Lester Maddox Cafeteria which he opened September 26, 1964 upon a part of the premises formerly used by the Pickrick Corporation, said real estate being the property owned by Maddox and under a long-term lease to the Corporation, which lease was terminated and cancelled by the parties on the latter date. The defendant Maddox, appellant here, though previously conducting a restaurant business on these premises as President of Pickrick Corporation, did—after said injunction—conduct the same type of business on part of the same premises, but did so as an individual and not as an officer or agent of the corporation.

On September 28, 1964, the plaintiffs filed their motion for an order, and an Order of U. S. District

Judge F. A. Hooper, thereon, requiring Lester G. Maddox, The Pickrick, a corporation, and Lester Maddox Cafeteria to appear to show cause, among other things, why they should not be held in civil contempt of the Court's Order entered September 4, 1964, because of the denial of service to members of the Negro race at Lester Maddox Cafeteria on September 28, 1964.

On September 29, 1964, the intervenor filed its motion for an order, and Order of United States District Judge F. A. Hooper thereon, requiring the Pickrick Restaurant and Lester G. Maddox to appear to show cause, among other things, why they should not be held in civil contempt of the order of the court of September 4, 1964, for refusing on September 28, 1964 to admit certain named Negroes to the premises of the Pickrick Restaurant, which the motion alleged was being operated under the name of Lester Maddox Cafeteria.

Responses to each of said Motions and Orders were filed by the parties cited to show cause therein, respectively, on January 30, 1965, and hearing by the court on the motion (it treating them as a single motion) commenced February 1, 1965 and consumed practically three days.

(ii) The judgment sought to be reviewed was adverse to Lester G. Maddox, and was dated and entered February 5, 1965, and the Notice of Appeal to the Supreme Court of the United States was filed by Lester G. Maddox in the United States District Court for the Northern District of Georgia, Atlanta Division, on the 31st day of March, 1965.

(iii) The statutory provisions believed to confer on this court jurisdiction of the appeal is Section 206 (b) of Title II of the Civil Rights Act of 1964 (Pub. Law 88-352, 78 Stat. 214).

(IV) Cases believed to sustain the jurisdiction to hear and decide the appeal are:

NAACP v. ALABAMA, 357 U.S. 460.

GIBSON v. FLORIDA LEGISLATIVE INV. COM., 83 S. Ct. 889.

V. This case involves the question as to whether or not the Congress is empowered by the Constitution of the United States to enact Sections 201 (a) (b) 2, (c) 2, 203, 204 (a), 206 (a) (b) and 207 (a) of Title II of the Civil Rights Act of 1964. (78 Stat. 241). The pertinent text of said sections are hereto attached.

C.

(1) The following questions are presented by this appeal:

1. Does the final judgment of contempt entered February 5, 1965 against the defendant Lester G. Maddox deprive him of right of freedom of association, in violation of the provisions of Article I of the Amendments to the Constitution of the United States of America?

2. Does such judgment deprive said defendant of liberty or property without due process of law, or constitute the taking of private property of defendant for public use without just compensation, in violation of the provisions of Article V of such Amendments?

3. Does such judgment forcing the defendant to serve customers which he objects to serving, or to pay

$200.00 per day for his failure to serve such customers against his will, place the defendant in a condition of involuntary servitude in violation of the provisions of Article XIII of such Amendments, in the event he should serve such customers under coercion of said judgment in order to avoid the payment of such penalty?

4. Do the States have exclusive powers for domestic and local government, including the regulation of civil rights—the rights of person and of property—under the provisions of the Constitution of the United States and its Amendments?

5. Does the Constitution of the United States either expressly or by implication confer upon the government of the United States the power to grant or secure to all persons rights or privileges to be free from being discriminated against by an individual businessman, operating a private business, for any reason?

6. In the absence of the grant of such power to the United States government, is such power not reserved by the Constitution to the exclusive jurisdiction of the States?

7. Can any person, whether or not a citizen of the United States, and whether or not a citizen of one of the several States other than Georgia, upon coming into the State of Georgia, be granted privileges and immunities by the Congress which are not common to the citizens of Georgia under the Constitution and laws of Georgia by virtue of their being citizens of Georgia, or, is it within the exclusive power of Georgia to control the rights of its own citizens?

8. Does the Congress have the power to grant and secure to a citizen of one of the several States any

privilege or immunity while he is within the State of Georgia, which is not granted or secured to citizens of the State of Georgia under its Constitution and laws by virtue of their Georgia citizenship?

9. If, under the Constitution and laws of the State of Georgia, any Georgia citizen has the legal right to conduct a privately owned business having no connection with any innkeeper or common carrier, and has the legal right to select his customers for such business, and has the legal right to refuse other citizens of Georgia as customers for any reason whatsoever without incurring any legal liability for such refusal—does the Congress have the power to grant to all persons, including the citizens of other States, a federal right to become customers of such business, and to provide a federal cause of action for the enforcement of such federal right, without violating the provisions of Article IV, Section 2, clause I of the original Constitution, and the provisions of Articles IX and X of such Amendments?

10. Do the facts shown by the record in this case, and the law applicable thereto, render said judgment of February 5, 1965 an unconstitutional application to this defendant by the District Court of the provisions of Title II of the Civil Rights Act of 1964?

D.

STATEMENT OF THE CASE

This is an appeal from a final judgment of contempt against appellant Lester G. Maddox, as sole proprietor of Lester Maddox Cafeteria, entered by the United States District Court for the Northern District of Georgia, Atlanta Division, on February 5, 1965 adjudg-

ing the appellant, Lester G. Maddox, to be in contempt of the court for violating a permanent injunction entered by the court on September 4, 1964, enjoining the Pickrick, a corporation and Lester G. Maddox, its President and Manager, their successors, officers, attorneys, agents and employees, together with all persons in active concert or participation with them, from:

(a) Refusing to admit Negroes to the premises of the Pickrick Restaurant upon the same basis and under the same conditions that non-Negro members of the general public are admitted to the restaurant;

(b) Failing or refusing to sell food or meals and to provide service to Negro patrons upon the same basis and in the same manner that food, meals and services are made available to patrons of other races;

(c) Otherwise failing or refusing to make any of the goods, services, facilities, privileges, advantages or accommodations of the Pickrick Restaurant available to Negroes upon the same basis and under the same conditions that they are available to other races.

On August 13, 1964 the Pickrick Restaurant was closed down by defendant "The Pickrick", a corporation; on September 28, 1964 appellant Maddox was the sole owner of Lester Maddox Cafeteria which he opened on September 26, 1964 upon part of the premises formerly used by the Pickrick corporation. The appellant though previously conducting a restaurant business on these premises as President of the Pickrick corporation, did—after said injunction—conduct a restaurant business on said premises, but did so as an individual and not as an officer and agent of the corporation.

Upon the opening of the Lester Maddox Cafeteria

signs were posted at the entrance and elsewhere within the same as follows:

> "NOTICE: I do not offer to serve either (1st) integrationists, nor (2) interstate travelers, regardless of race, color, creed or national origin. A person entering this restaurant for service will be considered as representing to me that such person is neither an integrationist nor an interstate traveler. If such representation is believed to be false, service will be refused. Lester Maddox, Owner, Lester Maddox Cafeteria."

Pursuant to this policy, the appellant Maddox excluded from Lester Maddox Cafeteria several white "integrationists" and stated that he would serve Negroes in his cafeteria who were not integrationists.

The final judgment of contempt provides that if appellant shall refuse service to any person at the Lester Maddox Cafeteria, he shall pay a fine of $200.00 for each day that the restaurant or cafeteria has been open for business from the date of this Order to the date of such refusal, and all fines so imposed shall be cumulated for purposes of payment and collection.

Appellant appeals from said final judgment of contempt upon the ground that the same is unconstitutional as applied to appellant under the facts in this case, for all of the reasons set forth in his response to the rules for contempt filed by him in said cause on February 1, 1965.

Respectfully,
WILLIAM G. McRAE
Attorney for Appellant

2034 Bank of Georgia Building
Atlanta, Georgia 30303

APPENDIX

PERTINENT TEXT OF CIVIL RIGHTS ACT OF 1964, 78 STAT. 241.

TITLE II — INJUNCTIVE RELIEF AGAINST DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATON

"Sec. 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

"(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

> (2) any restaurant, cafeteria, luncheon, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station; . . ."

"(c) The operations of an establishment affect commerce within the meaning of this title if . . . (2) in the case of an establishment described in paragraph (2) of subsection (b), it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; . . ."

"Sec. 203. No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 201 or 202, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 201 or 202, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 201 or 202."

"Sec. 204. (a) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 203, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved and, upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the civil action without the payment of fees, costs, or security."

"Sec. 206. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1)

signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

"(b) In any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

"In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the

acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

"It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited."

"Sec. 207. (a) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law."

(Filed in Clerk's Office Feb 5 1965)

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION.

GEORGE WILLIS, JR.
WOODROW T. LEWIS
ALBERT L. DUNN,
Plaintiffs

ROBERT F. KENNEDY,
Attorney General of the
United States,
Intervenor

vs

THE PICKRICK, a Corporation,
and LESTER G. MADDOX,
Defendants

CIVIL ACTION NO. 9028

ORDER OF COURT ON MOTION FOR CONTEMPT.

This is a motion for contempt by plaintiffs, and by the Attorney General of the United States as Intervenor, against the defendants, alleging primarily the violation of an injunction by a three-judge court entered September 4, 1964. This motion was filed September 29, 1964, but hearing continued at the request of the Attorney General pending a decision by the Supreme Court of the United States concerning the calidity of the Civil Rights Act of 1964. Again set for a hearing it was continued on motion of defendants in order to accord

them the time for preparation of a defense, this continuance having been agreed to by the plaintiffs.

The hearing on this motion commenced February 1st and consumed practically three days. The evidence is not in dispute—the questions of law concern primarily the effect of certain changes made by defendant Lester Maddox (president and sole stockholder of the Pickrick restaurant, a corporation) in the operations of the cafeteria subsequent to the date of the injunction, and the basis on which said defendant admittedly did refuse to serve the Negro plaintiffs and several other Negroes.

(1) The temporary injunction issued by this Court on July 22, 1964, and the permanent injunction issued on September 4, 1964, enjoined the Pickrick, Inc. and Lester G. Maddox from:

(a) Refusing to admit Negroes to the premises of the Pickrick Restaurant upon the same basis and under the same conditions that non-Negro members of the general public are admitted to the restaurant;
(b) Failing or refusing to sell food or meals and to provide service to Negro patrons upon the same basis and in the same manner that food, meals and services are made available to patrons of other races;
(c) Otherwise failing or refusing to make any of the goods, services, facilities, privileges, advantages or accommodations of the Pickrick Restaurant available to Negroes upon the same basis and under the same conditions that they are made available to other races.

The temporary injunction of July 22nd went into effect on August 11th, and continued until the permanent injunction was entered. Defendants had due and legal notice of the injunctions, which, by their terms, were

made applicable to "the defendants, their successors, officers, attorneys, agents and employees, together with all persons in active concert or participation with them."

In their responses filed February 1, 1965 defendants allege, and the proof shows, the following:

On August 13, 1964 the Pickrick Restaurant was closed down by defendant "The Pickrick", a corporation; on September 28th defendant Maddox was the sole owner of Lester Maddox Cafeteria which he opened on September 26th upon a part of the premises formerly used by the Pickrick Corporation, said real estate being the property owned by Maddox and under a long lease to the Corporation, which lease was terminated and cancelled by the parties on said date. The Pickrick Corporation went out of the restaurant business on August 13th and since that time its business has been the sale of novelties to all persons, including the sale of axe handles. It occupies a portion of the same premises previously occupied, and pays rent to Maddox who, in turn, leased from the corporation its restaurant equipment.

From the above it appears that defendant Maddox, through previously conducting a restaurant business on these premises as President of Pickrick Corporation, did—after said injunction—the same business on the same premises, but did so as an individual and not as an officer and agent of the corporation. It also appears the corporation, with Maddox as its president and sole stockholder, is also occupying a part of the same premises as theretofore, and is conducting the business of selling novelties. Under these circumstances the Court finds that the corporation itself continued to be subject to the injunctions of this Court, which covered not only

the "successors" of the defendants, but also "all persons in active concert or participation with them." Particularly is this true where it appears, as in this case, that the changes in the methods of operations were made with the intent and purpose of evading the injunctive Orders of this Court.

(2) The evidence is overwhelming to the effect that on August 11th, August 13th, September 26, 1964, and on January 29, 1965, a number of Negroes (including the plaintiffs) were refused service at the restaurant in question by Lester Maddox and his employees. This refusal is not only admitted by defendant Maddox, but he divulged, with great feeling, that he will never allow these plaintiffs to be served in his restaurant, nor allow any "integrationists" to be therein served.

In responses filed February 1, 1965 defendants allege that upon the opening of the Lester Maddox Cafeteria signs were posted at the entrance and elsewhere within the same as follows:

> "NOTICE: I do not offer to serve either (1st) integrationists, nor (2) interstate travelers, regardless of race, color, creed or national origin. A person entering this restaurant for service will be considered as representing to me that such person is neither an integrationist nor an interstate traveler. If such representation is believed to be false, service will be refused. Lester Maddox, Owner, Lester Maddox Cafeteria."

The response alleges that the policy of the Pickrick Corporation in refusing services to members of the Negro race on the ground of race alone, has not been continued by Lester Maddox, but that "Lester Maddox gives notice that he will never knowingly serve an in-

tegrationist in his cafeteria, whatever may be the race, color, religion or national origin of such integrationist. Lester Maddox terms any person an integrationist who holds the political belief that the Federal government has, or should have, the power to deprive him of his inalienable and constitutional rights to be free from having to render personal services to any other person who he objects to serving" (see Response, pages 5 & 6). The response admits that when plaintiffs, in company with one Charles Edward Wells, Sr., appeared at the cafeteria on September 28th they were refused service, Maddox stating that he knew them to be integrationists, and he requested them to leave his premises. Defendants aver that Title Two of the Civil Rights Act of 1964 is not applicable to them because such discrimination as is practiced "is not upon the ground of race, color, religion or national origin", but "upon the ground of the political beliefs and ideas espouses and promoted by integrationists, which are exceedingly obnoxious to him, and with whom he does not desire to associate regardless of the race, color, religion or national origin of such persons."

This Court finds, however, that defendants have, as alleged, been excluding members of the Negro race because of their race and not because of their being "integrationists." It is true that Maddox has also excluded several white "integrationists" and he vows he would not permit certain prominent white citizens of this community to be served at his restaurant.

As shown by the depositions of a large number of non-residents of the state, it appears they were not questioned at this restaurant regarding their views on integration, and they were served. Defendants' contention that interstate travelers were not served, and that

no integrationists were served, is not borne out by the evidence.

Assuming, however, that defendants' policy of excluding customers was based upon their political beliefs and not upon race or color, the defendants go further and by the testimony of Lester Maddox, himself, state that any person who seeks service in the restaurant on the basis of the Civil Rights Act of 1964 would be an integrationist and would not be served. To sustain that defense would create an anomaly heretofore unheard of: The beneficiaries under a certain law would be denied the rights given thereunder because they insisted upon its provisions.

CONCLUSIONS OF LAW.

(1) This Court has jurisdiction of this cause and jurisdiction over Lester G. Maddox and the Pickrick, Inc., as defendants herein.

(2) Both the Pickrick, Inc. and Lester G. Maddox are bound by the terms of the permanent injunction entered in this case on September 4, 1964. As Lester G. Maddox is named as an individual in the action and in the injunction, the Court cannot sustain the contentions of defense counsel that he is now acting in a different capacity and therefore not subject to the injunction. Whether acting for a corporation or only for himself, he is still subject to the injunction which governs his own actions. Particularly is this true when his activities are done in connection with the same restaurant and upon the same premises involved in the injunction.

(3) As to the Pickrick, Inc. there could be some doubt as to whether or not it is subject to charges of contempt of court under the facts. However, no cases

have been cited to this Court to the effect that a corporation itself may no be guilty of contempt of court. Defendant Lester Maddox is the president and sole stockholder of the corporation, and his acts in behalf of the corporation are imputed to it. The sole business of the corporation at this time is the sale of novelties, and this business is operated in connection with the operation of the restaurant. Its customers are primarily those who patronize the restaurant. Even under federal criminal statutes,

> "whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal." *See Criminal Rule No. 2.*

There is authority to the effect that:

> "Both under and apart from statute, the general and modern rule is that a corporation can be guilty of contempt as well as an individual, and it may be fined or its property sequestered therefor." 17 C.J.S. p. 93.

This is certainly true when the president of the corporation is the sole stockholder and the acts complained of are acts within the charter powers of the corporation.

(4) This is a civil contempt and not a criminal contempt (the latter under the law requiring a jury trial). The only purpose of a civil contempt is to obtain future compliance of the injunctions of this Court. Where "such contempt is continuing" the respondent may be required to pay a fine to the United States of a designated sum for each day that the contempt continues." See *United States of America vs. State of Mississippi, et al* (5 Cir.) 313 F.2d 534, September 29, 1962. Our

courts have the duty to see that their orders are obeyed and not flagrantly ignored.

"There can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny." See *United States vs. Mine Workers*, 330 U.S. 258, concurring opinion.

It is their rule that a fine may be imposed,

"to coerce the defendant into compliance with the court's order." (See p. 303)

It is the duty of the Court to

"consider the character and the magnitude of the harm threatened by continued contumacy and the probable effectiveness of any suggested sanction in bringing about the result desired."

(5) This Court cannot at this time entertain various attacks made on the constitutionality of the Civil Rights Act of 1964. Under the law, all persons must obey injunctions issued by the courts, even though they may subsequently be reversed. In the instant case, however, the Civil Rights Act of 1964 has been held valid by the United States Supreme Court in regard to Title Two thereof, which applies to operators of restaurants.

(6) It is a well known fact that the Civil Rights Act of 1964, particularly as to the public accommodations provisions, met with overwhelming opposition in this state. Since the Act, however, has been held valid by the Supreme Court of the United States all of the hotels and restaurants in the Atlanta area, as far as this Court is aware, have accepted it as the law and are in compliance with it, and few, if any, incidents of breach of the peace have occurred of late except at the

Pickrick Restaurant (now the Lester Maddox Cafeteria). Defendant Maddox at the trial insisted that enforcement of this statute is virtually ruining his business. Testimony of his accountant, however, shows that although there has been a considerable monthly decrease in the revenues of the Lester Maddox Cafeteria, other hotels and restaurants have been doing a profitable business. This Court is compelled to fix a penalty for future violations by the defendants of the injunction granted by the three-judge court which will be effective. The Court realizes that the vehement protestations of defendant Maddox on the trial that he will not serve these plaintiffs in the future, will make it difficult for said defendant to comply. Should the continued refusal of defendant Maddox to comply with the law and the Orders of the Court cause him in the future to lose the fruits of his endeavors and the assets which he has accumulated under our free enterprise system, it would be a matter of deep regret to all, but the responsibility for his losses would rest upon his own shoulders. The spirit of lawlessness in this country which is giving deep concern to all of our thoughtful citizens, is in the minds of our young people greatly augmented when their elders flagrantly violate the laws of the land and the orders of the courts. Our laws must be enforced or a state of anarchy will follow.

(7) Order of Court in accordance herewith will be entered in this case.

FRANK A. HOOPER
Judge

(Filed in Clerk's Office Feb 5 1965)

APPENDIX
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION.

GEORGE WILLIS, JR.
WOODROW T. LEWIS
ALBERT L. DUNN,
Plaintiffs

ROBERT F. KENNEDY,
Attorney General of the
United States,
Intervenor

vs

THE PICKRICK, a Corporation,
and LESTER G. MADDOX,
Defendants

CIVIL
ACTION
NO. 9028

ORDER OF CIVIL CONTEMPT.

Based upon Findings of Fact and Conclusion of Law filed in this case IT IS HEREBY ORDERED:

(1) Defendants Lester G. Maddox and The Pickrick, Inc. are in civil contempt of the permanent injunction of this Court of September 4, 1964, and will remain in civil contempt of such injunction until they shall have purged themselves of such contempt as hereinafter provided:

Defendants may purge themselves by adopting and pursuing a policy of serving all persons who present themselves for service at the restaurant known as "Les-

ter Maddox Cafeteria" without discrimination or segregation on the ground of race, color, religion or national origin. Defendants, if continuing to refuse to serve Negroes, will not be purged of contempt of court even though it should appear that defendants also are refusing to serve persons because they are travelers in interstate commerce, or because they are "integrationists", or because of any political beliefs of such persons, or because such persons, in seeking service, may be doing so because of provisions of the Civil Rights Act of 1964.

If defendants, or their employees or agents, shall refuse service to any person in violation of the foregoing, all defendants participating therein shall pay a fine of Two Hundred ($200.00) Dollars for each day that the restaurant or cafeteria has been open for business from the date of this Order to the date of such refusal, and all fines so imposed shall be cumulated for purposes of payment and collection.

Such final fines shall continue to accumulate at the above date and for each day as long as defendants, or either of them, either directly or indirectly, operate said restaurant or cafeteria, or until such time as the defendants shall subscribe and file in this Court a statement that they will henceforth serve all persons who present themselves for service at said restaurant or cafeteria, without discrimination or segregation on the ground of race, color, religion or national origin, pursuant to this Order of Court. Such fines shall then cease to accumulate as to any defendant signing and filing such a paper with this Court. If, following such filing, any defendant shall again refuse service to any person in violation of this Order, such statement previously filed shall be deemed a nullity, and any fines that

would otherwise have accumulated except for such statement shall thereupon become due and payable.

Defendants may upon the expiration of sixty (60) days following the entry of this Order apply to the Court for an Order declaring them to be purged of civil contempt.

Costs of this proceeding shall be charged against defendants.

This 5th day of February, 1965.

FRANK A. HOOPER
United States District Judge

PROOF OF SERVICE

I, William G. McRae, one of the attorneys for Lester G. Maddox, appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 29th day of June, 1965, I served copies of the foregoing Jurisdictional Statement on the several parties thereto, as follows:

1. On the United States, by leaving a copy thereof at the office of Charles L. Goodson, Esq., United States Attorney for the Northern District of Georgia, at Room 402, Federal Building, Atlanta, Georgia, and by mailing a copy in a duly addressed envelope, with air mail postage prepaid, to The Solicitor General, Department of Justice, Washington 25, D.C.

2. On the plaintiffs, George Willis, Jr., Woodrow T. Lewis and Albert L. Dunn, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to their attorney of record William H. Alexander, Esq., 959-1/2 Hunter Street, N.W., Atlanta, Georgia 30314.

/s/ WM. G. McRAE
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IN THE

Supreme Court of the United States

October Term, 1965

No. 308

LESTER G. MADDOX,

Appellant,

—v.—

GEORGE F. WILLIS, JR., *et al.*,

Appellees.

MOTION TO AFFIRM OR DISMISS

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IN THE

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No. 308

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—v.—

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Appellees.

MOTION TO AFFIRM OR DISMISS

Appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the appeal be dismissed on the grounds that it is not within the jurisdiction of this Court, or, in the alternative, that the final judgment and decree of the District Court be affirmed on the ground that the question is so unsubstantial as not to warrant further argument.

Opinion Below

The final judgment of civil contempt was entered on February 5, 1965, but is not yet officially reported. It, and a copy of the court's findings of fact, conclusions of law, and order of civil contempt appear in appellant's jurisdictional statement (App. pp. 14-25). Prior opinions herein are reported in *Willis* v. *Pickrick Restaurant,* 231 F. Supp. 396 (N. D. Ga. 1964), stay denied, 379 U. S. 241 and *Willis* v. *Pickrick Restaurant,* 234 F. Supp. 179 (N. D. Ga. 1964).

Questions Presented

1. Whether a final judgment of contempt ordered by a one-judge United States District Court may be directly appealed to the Supreme Court of the United States?

2. Whether a restaurant which affects commerce within the meaning of Title II Section 201(b)(2), and (c) of the Civil Rights Act of 1964 must serve members of the public without regard to race?

Statement of the Case

The United States District Court for the Northern District of Georgia, Atlanta Division, with a single judge sitting, entered a final judgment of contempt against the appellant on February 5, 1965, for having violated a permanent injunction entered by the then dissolved[1] three-judge court on September 4, 1964. The permanent injunction ordered the appellant to cease refusing service in his restaurant to Negro persons solely on account of their race.

The appellant never appealed from the final judgment of the three-judge district court. Prior thereto, July 28, 1964, however the appellant had filed notice of appeal from a temporary injunction issued in this case on July 23, 1964, to the Supreme Court of the United States. No Jurisdictional Statement was filed and the appeal was abandoned.

August 11 and 13, 1964, Negro plaintiffs made unsuccessful attempts to eat at the Pickrick, which was a corporation

[1] The three-judge court ordered itself dissolved on September 4, 1964, after finding no statutory authority for convening such a court to hear civil contempt proceedings ancillary to suits prosecuted under the Civil Rights Act of 1964. Further proceedings relating to the civil contempt were therefore ordered to be heard by the district court sitting with one judge.

and were informed by the appellant that the restaurant was closed as it later was. Subsequently, September 26, 1964, on part of the premises formerly occupied by the Pickrick the appellant opened the Lester Maddox Cafeteria, owned by appellant alone. This change in method of operation was made with the intent and purpose of evading the injunctive orders of the court (R. 512). The following sign was posted in and about the Lester Maddox Cafeteria:

> Notice: I do not offer to serve either (1st) integrationists, nor (2) interstate travelers, regardless of race, color, creed or national origin. A person entering this restaurant for service will be considered as representing to me that such person is neither an integrationist nor an interstate traveler. If such representation is believed to be false, service will be refused. Lester Maddox, Owner, Lester Maddox Cafeteria.

September 26, 1964, and January 28 and 29, 1965, Negro plaintiffs attempted to enter the Lester Maddox Cafeteria for the purpose of eating and were excluded because of race (R. 519). The appellant in the course of refusing service, also assaulted them (Tr. of Feb. 1, 1965, 53, 54, 55).

Thereafter, on motion of the plaintiffs and the Attorney General of the United States, the appellant was ordered to show cause why he should not be held in civil contempt.

After a three-day hearing Judge Hooper found the appellant in contempt and set a penalty of $200.00 for each day of any future violations.

Reasons for Dismissal

This appeal is not within the jurisdiction of the United States Supreme Court. 28 U. S. C. §1253, P. L. 88-352 §206(b).

Under Title II, §206 of the Civil Rights Act of 1964, direct appeals to this Court are limited to those from three-judge courts. Section 206 must be read in the light of prior statutes governing three-judge courts. See, *Katzenbach* v. *McClung*, 379 U. S. 294, where §1253 is cited as supporting a direct appeal of a case under the Act, and *Atlanta Motel* v. *United States*, 379 U. S. 241, where §2282 is cited as supporting the empaneling of a three-judge court. Therefore, whether or not a three-judge court empaneled under §206 is to continue to sit is governed by decisions interpreting the statutes controlling the three-judge court. Under these decisions a three-judge court does not sit to resolve proceedings ancillary to the main action.[2] Therefore, the dissolution of the three-judge court which issued the original injunction was proper. A single judge was authorized to issue the order of contempt from which appellant now seeks to take an appeal.

---

[2] Under the authority of *Bailey* v. *Patterson*, 369 U. S. 31, the three-judge requirement is to be narrowly construed, the three-judge court is not required where no substantial constitutional question is presented, and where such a special court is not required, the case cannot be directly appealed to the Supreme Court under §1253, even if a three-judge court is actually convened and hears the case. In *Turner* v. *Memphis*, 369 U. S. 350, the existence of fictitious claims eliminated the necessity of the three-judge panel. *Kesler* v. *Dept. of Public Safety*, 369 U. S. 153, declares that the three-judge court is a technical device to be construed strictly. In *Allen* v. *Prince Edward County*, 249 F. 2d 462 (4th Cir. 1957), cert. den. 355 U. S. 953 (1957), the three-judge panel was, as in this *Maddox* situation, dissolved before the proceedings in controversy were before the court. The court there held in effect that proceedings ancillary to those requiring a three-judge court do not require such a court.

Appeals to this court are governed solely by statute and such appeals from a district court, sitting with a single judge are extremely limited and confined to:

1. A one-judge district court holding a federal statute unconstitutional (28 U. S. C. 1252);

2. Criminal cases, where a one-judge court has entered one of certain types of judgments adverse to the United States (Criminal Appeals Act, as amended 18 U. S. C. 3731);

3. Where the United States brings a civil action to enforce antitrust laws, the Interstate Commerce Act, or Title II of the Federal Communications Act (15 U. S. C. §29 and 49 U. S. C. §45, as amended by §17 of the Act of June 25, 1948, 62 Stat. 989; and 47 U. S. C. §401(d)) and a one-judge or three-judge court has entered judgment.

Obviously, this is not one of the above special situations. The case is therefore not appealable on its merits directly to the Supreme Court. In *Stratton* v. *St. Louis Southwestern*, 282 U. S. 10, at 15-16, the following language is used:

> If a single judge, thus acting without jurisdiction, undertakes to enter an order granting an interlocutory injunction or a final decree, either dismissing the bill on the merits or granting a permanent injunction, no appeal lies from such an order or decree to this court, as the statute plainly contemplates such a direct appeal only in the case of an order or decree entered by a court composed of three judges in accordance with the statutory requirement.

Reasons for Affirming

Assuming *arguendo* that this Court does have jurisdiction, the District Court's final judgment of contempt should be affirmed.

The record is clear that the appellant violated the terms of the injunction by refusing to serve Negroes because of their race. *Katzenbach* v. *McClung,* 379 U. S. 294 makes it equally clear that he was obliged to serve them. *McClung* held that §201(a)(b)(c) of the Civil Rights Act of 1964 forbidding racial discrimination by restaurants offering to serve interstate travelers or serving food a substantial portion of which has moved in interstate commerce is a constitutional exercise of the commerce power:

> The power of Congress in this field is broad and sweeping; where it keeps within its sphere and violates no express constitutional limitation it has been the rule of this Court, going back almost to the founding days of the Republic, not to interfere. The Civil Rights Act of 1964, as here applied, we find to be plainly appropriate in the resolution of what Congress found to be a national commercial problem of the first magnitude. We find in it no violation of any express limitation of the Constitution and we therefore declare it valid. (At 305).

Appellant does not now contend that his conduct did not violate the injunction. He argues belatedly only that Title II of the Civil Rights Act of 1964 is unconstitutional. But he raises no questions which have not been thoroughly explored and settled by this Court. *Heart of Atlanta Motel, Inc.* v. *United States,* 379 U. S. 241; *Katzenbach* v. *McClung, supra.*

CONCLUSION

For the foregoing reasons this appeal should be dismissed for want of jurisdiction or the lower court should be affirmed as its decision is manifestly correct and the appeal raises no substantial constitutional question which warrants further argument.

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 308

LESTER G. MADDOX, APPELLANT

v.

GEORGE F. WILLIS, JR., ET AL., APPELLEES

and

NICHOLAS DEB. KATZENBACH, ATTORNEY GENERAL, INTERVENOR-APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16, paragraphs 1(a) and 1(c) of the Rules of this Court, Nicholas deB. Katzenbach, as intervenor-appellee, moves that the appeal be dismissed, or, alternatively, that the judgment of the district court be affirmed.

QUESTIONS PRESENTED

1. Whether a direct appeal to the Supreme Court lies from an order of a single judge holding appellant in contempt of an order of a three-judge district court convened pursuant to Section 206(b) of the Civil Rights Act of 1964.

2. Whether Title II of the Civil Rights Act of 1964 is unconstitutional.

782-959—65—

STATEMENT

This is a direct appeal taken from a final judgment entered by a single judge of the United States District Court for the Northern District of Georgia, holding appellant in civil contempt of the permanent injunction issued by a three-judge court on September 4, 1964. The appeal arises out of the Pickrick Restaurant litigation.[1]

On July 9, 1964, appellees George Willis, Jr., Woodrow T. Lewis, and Albert L. Dunn, filed a complaint in the Northern District of Georgia under Section 204 of the Civil Rights Act of 1964 seeking relief against appellant Lester G. Maddox for refusing them service because of their race in violation of Section 203 of the Act. The Attorney General was granted leave to intervene and filed a complaint seeking a preliminary and permanent injunction restraining appellants from continuing to violate the Act.

Pursuant to the request of the Attorney General, a three-judge court was convened. See Sections 206(a) and (b) of the Civil Rights Act of 1964, 78 Stat. 245, 42 U.S.C. 2000a–5. On July 22, 1964, the three-judge court upheld the constitutionality of Title II of the Civil Rights Act of 1964, as applied to the establishment in question. A preliminary injunction was issued restraining the Pickrick Restaurant and Lester Maddox from:

> (a) Refusing to admit Negroes to the premises of the Pickrick Restaurant upon the same

[1] The name of the restaurant was subsequently changed to the "Lester Maddox Cafeteria."

basis and under the same conditions that non-Negro members of the general public are admitted to the restaurant;

(b) Failing or refusing to sell food or meals and to provide service to Negro patrons upon the same basis and in the same manner that food, meals and services are made available to patrons of other races;

(c) Otherwise failing or refusing to make any of the goods, services, facilities, privileges, advantages or accommodations of the Pickrick Restaurant available to Negroes upon the same basis and under the same conditions that they are available to other races.

The court stayed the injunction until August 11, 1964, to allow appellants time to note an appeal and to seek a stay. Appeal was noted July 28, 1964, but has not been prosecuted. This Court denied a stay on August 10, 1964.

Shortly thereafter, appellees and the Attorney General filed motions to show cause why Lester Maddox and the Pickrick Restaurant should not be adjudged in civil contempt for violating the order of July 22, 1964. On August 25, 1964, Judges Bell, Morgan and Hooper finding "[n]o statutory basis * * * for the convening of a three-judge court to hear civil contempt proceedings ancillary to suits prosecuted under the Civil Rights Act of 1964" ordered "all further proceedings as they relate to the civil contempt proceedings to be heard by the district court in due and normal course in its ordinary jurisdiction," and dissolved, for that purpose, the three-judge court which had been convened August 13, 1964.

On September 4, 1964, the three-judge court[2] appointed to hear the main action granted a permanent injunction restraining Leste Maddox and the Pickrick Restaurant in terms identical to those of the temporary injunction. The hearing of the civil contempt proceeding was continued pending this Court's decision in *Atlanta Motel* v. *United States,* 379 U.S. 241, and *Katzenbach* v. *McClung,* 379 U.S. 294. In the interim, appellee and the Attorney General filed amended motions to show cause why appellant should not be held in civil contempt of the permanent injunction. After a three-day hearing, on February 5, 1965, Judge Hooper entered an order holding Lester Maddox and the Pickrick Restaurant in civil contempt of the permanent injunction of September 4, 1964.

The contempt order provides that if appellant refuses service to Negroes on the grounds of race or color, he shall pay a fine of $200.00 for each day that the restaurant or cafeteria has been open for business from the date of the contempt order to the date of the refusal, and that all fines so imposed shall be cumulated for the purpose of payment and collection. Provision is made for filing a statement of compliance which tolls the cumulative aspect of the order. Provision is also made for appellant to apply for an order declaring him to be purged of civil contempt.

ARGUMENT

1. Appellant argues that jurisdiction is conferred upon this Court by Section 206(b) of the Civil Rights

[2] The permanent injunction was enacted by a quorum of the court; Judge Tuttle was absent from the circuit.

Act of 1964, which authorizes a direct appeal to this Court from the final judgment of a three-judge court convened pursuant to Section 206(b).[3]

The short answer to appellant's contention is that the three-judge court which heard the main case was dissolved, insofar as the contempt proceeding is concerned, by the court's order of August 25, 1964, and the contempt proceeding was ordered "to be heard by the district court in due and normal course in its ordinary jurisdiction." This order was unquestionably correct. It is settled that an enforcement proceeding ancillary to a three-judge court order does not require a three-judge court. *Pendergast* v. *United States*, 314 U.S. 574; *Davis* v. *County School Bd.*, 142 F. Supp. 616 (E.D. Va.). Since the adjudication holding appellant in civil contempt of the injunction of September 4, 1964, was not an order of a three-judge court, Section 206(b) is inapplicable.[4]

2. In any event, in *Katzenbach* v. *McClung*, 379 U.S. 294, the constitutionality of Sections 201(a),

---

[3] Appellant also cites *NAACP* v. *Alabama*, 357 U.S. 449, and *Gibson* v. *Florida Legislative Investigation Committee*, 372 U.S. 539, as supporting this Court's appellate jurisdiction. Those cases, however, were reviewed by writ of certiorari to the highest courts of the respective States.

[4] Even if it were appellant's contention that the district court erred in hearing the civil contempt proceeding without the assistance of two other judges, that contention is one which should be directed to the court of appeals and not to this Court. *Idlewild Bon Voyage Liquor Corp.* v. *Epstein*, 370 U.S. 713; *Case* v. *Bowles*, 327 U.S. 927, affirming 149 F. 2d 777 (C.A. 9); *General Electric Co.* v. *Callahan*, 294 F. 2d 60 (C.A. 5), petition for certiorari dismissed, 369 U.S. 832; *Penagaricano* v. *Allen Corp.*, 267 F. 2d 550 (C.A. 1).

(b)(2) and (c)(2) of Title II was upheld as applied to a restaurant with annual local purchases of approximately $150,000. Even assuming that appellant could raise the question of constitutionality as a defense in the contempt proceedings although time for appeal from the three-judge court order had run, clearly, the applicability of Title II to appellant's restaurant, with annual purchases of food exceeding $250,000, raises no substantial constitutional question.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the District Court for the Northern District of Georgia be affirmed, or the appeal dismissed.

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Acting Solicitor General.
JOHN DOAR,
Assistant Attorney General.
HAROLD H. GREENE,
STEPHEN F. EILPERIN,
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v.

GEORGE F. WILLIS, JR., ET AL.,
Appellees.

BRIEF OF APPELLANT OPPOSING MOTIONS OF APPELLEES TO DISMISS OR AFFIRM.

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BRIEF OF APPELLANT OPPOSING MOTIONS OF APPELLEES TO DISMISS OR AFFIRM.

ARGUMENT

A.

ON MOTIONS TO AFFIRM

All of the appellees have filed motions that the appeal be dismissed on the ground that it is not within the jurisdiction of this Court, or, in the alternative, that the final judgmen of civil contempt be affirmed on the ground that the questions presented are so unsubstantial as not to warrant further argument.

Appellees contend that the decisions of this Court in *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S.

241, 85 S. Ct. 348, and in *Katzenbach v. McClung*, 379 U.S. 294, 85 S. Ct. 377, manifest that the claims by appellant that the final judgment of civil contempt against him, as sole proprietor of Lester Maddox Cafeteria, deprives him of rights guaranteed to him by the several provisions of the Constitution of the United States and Amendments thereto, specifically invoked as defenses in his responses to the orders to show cause, are so unsubstantial as not to need further argument. Appellant claims that rights secured to him by the First, Fifth, Ninth, Tenth and Thirteenth Articles of Amendments, and by Article IV, Section 2, clause 1 of the original Constitution are violated by the final judgment of civil contempt against him as sole proprietor of Lester Maddox Cafeteria. Appellant most clearly contends that his conduct did not violate the injunction of September 4, 1964.

In *Heart of Atlanta Motel, Inc. v. United States*, supra, no rights under the First Amendment and under Article IV, Section 2, clause 1 of the original Constitution were claimed by the corporation. The claim under the Thirteenth Amendment on behalf of the corporation was frivolous, since this Court long ago construed the term "involuntary servitude" therein to mean a personal servitude and to apply only to human beings. *Slaughter-House Cases*, 16 Wall. 36, 69. The corporation (Heart of Atlanta Motel, Inc.) dedicated its property to public use when it opened the motel, being bound by the laws of Georgia requiring an innkeeper "to receive as guests, so far as he can accommodate them, all persons of good character offering themselves, who are willing to comply with his rules." Ga. Code Section 52-103. It never had any right to refuse accommodations in the motel, if available, to any person of good

character who was willing to comply with its rules, and had no valid claim that Title II of the Civil Rights Act of 1964 deprived it of liberty or property in violation of the Fifth Amendment.

This Court, in *Heart of Atlanta Motel, Inc. v. United States, supra*, at page 359 of 85 S. Ct., stated:

> "... in a long line of cases this Court has rejected the claim that the prohibition of racial discrimination in public accommodations interferes with personal liberty."

In support of this statement this Court referred to *District of Columbia v. John R. Thompson Co.*, 346 U.S. 100, and cases there cited. The District of Columbia case involved a criminal prosecution against a corporation for discriminating against Negroes in operating a restaurant in the District of Columbia in violation of a local ordinance. No defense of personal liberty was involved. The two cases there cited are *Bob-Lo Excursion Co. v. Michigan*, 333 U.S. 28, and *Railway Mail Association v. Corsi*, 326 U.S. 88. In the first case cited, this Court merely upheld the conviction of a corporation, operating a public conveyance, under a Michigan Civil Rights Act prohibiting operators of public conveyances from discriminating against persons on account of race. In the second case cited, this Court merely upheld the New York Civil Rights Law prohibiting a labor union from denying membership in the union on racial grounds, as against the contention that the application of the law to the union of railway clerks was violative of the Due Process Clause of the Fourteenth Amendment. In none of these three cases did this Court reject a claim that the prohibition of racial discrimination in public accommodations inter-

feres with personal liberty. None of them involved an individual conducting a purely private business. After most diligent search we have been unable to locate any case decided by this Court wherein this Court has ever considered a claim by an individual owner of a private business that the prohibition of racial discrimination in the conduct of such business interfered with his personal liberty. Furthermore, we have been unable to find a single case where any State Civil Rights Act, requiring equal service to all persons in privately owned personal service businesses, has been decided to be, or not to be, in violation of the prohibition of involuntary servitude of human beings contained in the Thirteenth Amendment.

In *Katzenbach v. McClung*, supra, at page 380 of 85 S. Ct., this Court said:

> It was admitted that the Thirteenth Amendment was authority neither for validating nor invalidating the Act."

Appellant respectfully contends that the constitutional rights which he asserted and claimed as defenses in the court below under the First and Thirteenth Amendments, and under Article IV, Section 2, clause 1 of the original Constitution, have not heretofore been considered by this Court with respect to the application of Title II of the Civil Rights Act of 1964 to the owner of a purely private personal service business. These are substantial constitutional issues which warrant full argument upon appeal of the final judgment of civil contempt against appellant.

Appellant's conduct subsequent to September 4, 1964, was not a violation of the permanent injunction of that date, because appellant at all times thereafter

was acting in his own independent interest as owner of Lester Maddox Cafeteria, and not in the interest of nor for the benefit of The Pickrick Corporation, which had closed down the Pickrick Restaurant on August 13, 1964. See *Mexican Ore Co. v. Mexican Guadalupe Min. Co.*, 47 Fed. 351, 356, 357; *Fletcher Cyc. Corp.* (Perm. Ed) Vol. 10, Injunctions, Ch. 53, Sec. 4875, p. 329.

A party not under contract with another has a right to refuse to enter into contractual relations with him, no matter what his motive for such refusal may be. "Every man has a right to determine what branch of business he will pursue, and to make his own contracts with whom he pleases and on the best terms he can. . . . He may refuse to deal with any man or class of men." *Carew v. Rutherford*, 106 Mass. 1, 14. *Commonwealth v. Hunt*, 4 Met. 11, 133. *Winchester v. Howard*, 97 Mass. 303, 305. *Heywood v. Tillson*, 75 Maine, 225. *McMaster v. Ford Motor Co.*, 122 S.C. 244. "It is the right, 'long-recognized,' of a trader engaged in an entirely private business, 'freely to exercise his own independent discretion as to parties with whom he will deal'." *Federal Trade Commission v. Raymond Bros.-Clarke Co.*, 263 U.S. 565.

In the case last quoted from, this Court cited as authority for its holding 2 Cooley, Torts, 3d. Ed. 587, which reads:

> "It is a part of every man's civil rights that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice, or malice. With his reasons neither the public nor third persons have any legal concern."

This Court reaffirmed this "long-established" civil right of the private trader, such as appellant, by its decision in the case of *United States v. Colgate & Co.*, 250 U.S. 300, at 307, and, further emphasizing the right, said:

> "And, of course, he may announce in advance the circumstances under which he will refuse to sell."

Only the owner of private property can dedicate it to public use, and unless he does so, the owner has the "right of sole occupancy, or power of regulation, thereof." *Louisville & N. R.R. Co. v. West Coast Naval Stores Co.*, 198 U.S. 483.

A State can not, by legislative fiat or regulatory order of a commission, convert a private trader's property into a public utility; "for that would be taking private property for public use without just compensation, which no State can do consistently with the due process of law clause of the Fourteenth Amendment." *Producers' Transportation Co. v. R.R. Commission*, 251 U.S. 228. Nor can Congress, by legislative fiat, convert appellant's private cafeteria to public use as a place of public accommodation, consistently with the same clause of the Fifth Amendment.

This Court's decisions in *Legal Tender Cases*, 12 Wall. 457, 551 (1870), *Omnia Commercial Co. v. United States*, 261 U.S. 502 (1923), and *United States v. Central Eureka Mining Co.*, 357 U.S. 155 (1958), are inapposite and without precedential value in determining the constitutionality of Title II of the Civil Rights Act of 1964 as applied to appellant, and claimed to be a violation of appellant's rights under the Fifth Amendment. All of those cases involved the power of Congress to pass emergency measures during wartime

and deemed necessary to marshall the nation's resources so as to preserve the very existence of the nation. They involved wartime economic restrictions, temporary in character, and necessary to preserve the government, and the rights affected were considered "insignificant when compared to the widespread uncompensated loss of life and freedom of action which war traditionally demands." *United States v. Central Eureka Mining Co., supra*, at 168.

"It is the inherent and inalienable right of every man freely to deal or refuse to deal with his fellow men." *12 Am. Jur. Contracts*, Sec. 149, p. 641. "The power to regulate commerce, while great and paramount, cannot be exerted in violation of any fundamental right secured by other provisions of the National Constitution." *Adair v. United States*, 208 U.S. 161.

Article IV, Section 2, clause 1 of the original Constitution declares:

> "*Citizens privileges.* The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the Several States."

Construing the foregoing provision in *Slaughter-House Cases, supra*, at page 77 of 16 Wall, this Court said:

> "Its sole purpose was to declare to the several States, that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other States within your jurisdiction."

We think that its purpose was also to declare to the individual citizen of every State that he could go into any State in the Union with the assurance that this provision of the Federal Constitution conferred upon him the right, while in the other State, to enjoy all Privileges and Immunities conferred by the laws of the other State upon its own citizens, but no others, except privileges and immunities of citizens of the United States arising out of the nature and essential character of the National government, and granted or secured by the Constitution of the United States.

This provision guarantees to every individual citizen that his civil rights, the rights of person and property, will not be subject to regulation by any authority other than that of the State in which he may sojourn, or become a citizen. This constitutional right of the citizen to have his civil rights, the rights of person and property, regulated by the States, was not changed by the Fourteenth Amendment. The entire domain of civil rights, the Privileges and Immunities of citizens of the States, prior to that amendment lay within the constitutional and legislative power of the States, and without that of the Federal government. They still remain exclusively with the States. *Slaughter-House Cases, supra; U.S. v. Cruikshank*, 92 U.S. 542; *United States v. Harris*, 106 U.S. 629; *Maxwell v. Dow*, 176 U.S. 581; *United States v. Wheeler*, 254 U.S. 281.

> "The government of the United States, although it is, within the scope of its powers, supreme and beyond the States, can neither grant nor secure to its citizens rights or privileges which are not expressly or by implication placed under its jurisdiction. All that cannot be so granted or secured are left to the exclusive protection of the States . . .

> Sovereignty; for the protection of the rights of life and personal liberty within the respective States, rests alone with the States. . . . The fourteenth amendment prohibits a State from depriving any person of life, liberty, or property, without due process of law, and from denying to any person within its jurisdiction the equal protection of the law; but it adds nothing to the rights of one citizen against another. It simply furnishes an additional guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society. The duty of protecting all its citizens in the enjoyment of an equality of rights was originally assumed by the States, and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the amendment guarantees, but no more. The power of the national government is limited to the enforcement of this guaranty." *United States v. Cruikshank, supra*, headnotes 3, 7 and 8.

The Constitution does not confer upon Congress, either expressly or by implication, the power to legislate with respect to discrimination of one individual against another in his private business.

It seems rather absurb, to say the least, that Congress has been granted the power to establish a right in favor of a person to receive equal service at a private cafeteria, upon penalty to the owner of being forced out of business for failure to serve him when he did not wish to do so, while the power to protect such person and his property, and even his life, against the conduct of the owner, is the exclusive prerogative of the State.

Under the provisions of Article IV, Section 2, clause 1 of the Constitution a person may select any of the fifty States in which he may become a citizen, if he is a citizen of the United States. He can select any one of the fifty whose laws he deems suitable to afford him and his family the best opportunities for life, liberty, and the pursuit of happiness. If not satisfied with the laws of one State, and dispairing of being able to change them to conform to his desires, he may remove to another State without a visa. And he may, after trying another State, continue the process, if still dissatisfied, until he tries all fifty of the States. With such freedom of unrestricted movement, and the right to participate in making the laws in any State where he resides, it is grossly insulting, to say the least, for a citizen of any State to deplore the laws of another State.

> "The principle of 'Home Rule' was an axiom among the authors of the Constitution. After all, the vital test of self-government is not so much its satisfactoriness weighed in the scales of outsiders as it is its satisfactoriness weighed in the scales of 'the governed'."

Bute v. State of Illinois, 333 U.S. 640.

The right of the citizen under Article IV, Section 2, clause 1 to have his rights of person and property determined exclusively by the laws of the State to whose jurisdiction he submits his person, although a right not enumerated as such in the Constitution, is a right which was among those expressly reserved for him by the provisions of Article IX of the Amendments, which declares: "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage

others retained by the people." There being no provision in the Constitution delegating the power to the United States to regulate the citizen's civil rights, the rights of person and of property, this power is reserved to the States, respectively, or to the people by Article X of the Amendments, which declares: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

The First Amendment right of "freedom to associate" clearly includes the correlative right of "freedom not to associate." In *NAACP v. Alabama*, 357 U.S. 449, 460, this Court said:

> "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces Freedom of Speech."

This right is guaranteed to appellant by the First and Fifth Amendments against abridgment by the Congress.

Appellant has the right not to associate with persons whom he knows are irrevocably committed to the advocacy of beliefs and ideas which he abhors. He has the right to associate with persons whose beliefs and ideas he may feel to be most nearly compatible with his own, and whom he believes may be susceptible to being persuaded to accept his beliefs and ideas, without regard to the race, color, creed or national origin of such persons. And this right of freedom to associate or not to associate belongs to him in the conduct of his private business as well as in every other phase of his activities in the pursuit of happiness.

The Thirteenth Amendment prohibits involuntary servitude, except as punishment for crime. "Involuntary servitude has been correctly defined as 'the condition of one who is compelled by force, coercion or imprisonment and against his will to labor for another whether he is paid of not.' Black's Law Dictionary." *Crews v. Lindquist*, (1935) 361 Ill. 193, 197 N.E. 768, 772. "This amendment denounces a status or condition, irrespective of the manner or authority by which it is created." *Clyatt v. United States*, (1905) 197 U.S. 207, 216. "The plain intention was to abolish slavery of whatever name or form and all its badges and incidents; to render impossible any state of bondage; to make labor free, by prohibiting *that control* by which the personal service of one man is disposed of or coerced for another's benefit which is the essence of *involuntary servitude*." (emphasis supplied). *Bailey v. Alabama*, 219 U.S. 219, 241. "No emergency can justify an exercise of legislative power to compel one man to render involuntary service to another." *Ex parte Milligan*, 4 Wall. 2, 18. ". . . the traditions of our law are opposed to compelling a man to perform strictly personal services against his will even though he has contracted to render them." *Marcus Brown Holding Co. v. Feldman*, 256 U.S. 170, 199. "The Thirteenth Amendment denouncing slavery and involuntary servitude, that is, a condition of enforced compulsory service of one to another, does not in other matters protect the individual rights of members of the Negro race." *Corrigan v. Buckley*, 271 U.S. 323, 330. "While its immediate concern was African slavery, the Thirteenth Amendment was a charter of universal freedom for all persons of whatever race, color, or estate, under the flag. The words 'involuntary servitude' have a larger

meaning than slavery, and the Thirteenth Amendment prohibited *all control* by coercion of the personal service of one man for the benefit of another." (emphasis supplied). *Bailey v. Alabama*, supra.

The final judgment of civil contempt against appellant held him to be in violation of an injunction enjoining the Pickrick, Inc. and Lester G. Maddox from:

> (a) Refusing to admit Negroes to the premises of the Pickrick Restaurant upon the same basis and under the same conditions that non-Negro members of the general public are admitted to the restaurant;
>
> (b) Failing or refusing to sell food or meals and to provide service to Negro patrons upon the same basis and in the same manner that food, meals and services are made available to patrons of other races;
>
> (c) Otherwise failing or refusing to make any of the goods, services, facilities, privileges, advantages or accommodations of the Pickrick Restaurant available to Negroes upon the same basis and under the same conditions that they are made available to other races.

Appellant contends that he did not violate said injunction, because before he opened the Lester Maddox Cafeteria he posted in and about the Lester Maddox Cafeteria the following sign:

> "Notice. I do not offer to serve (1st) integrationists, nor (2) interstate travelers; regardless of race, color, creed or national origin. A person entering this restaurant for service will be considered as representing to me that such person is

neither an integrationist, nor an interstate traveler. If such representation is believed to be false, service will be refused. Lester Maddox, Owner, Lester Maddox Cafeteria."

At no time thereafter did appellant operate said cafeteria in such manner as to exclude therefrom, or fail or refuse to sell food or meals and to provide service, or otherwise fail or refuse to make any of the goods, services, facilities, privileges, advantages or accommodations of Lester Maddox Cafeteria available to Negroes upon any other basis or under any other conditions than they were made available to other races. He excluded from the cafeteria Negroes known to him to be integrationists upon the same basis and under the same conditions that he excluded members of the white race whom he knew to be integrationists. He refused to sell food and meals and to provide service, and failed and refused to make the goods, services, facilities, privileges, advantages and accommodations of Lester Maddox Cafeteria available to Negroes upon the same basis and under the same conditions that he refused these things to members of the white race.

The order is clearly one which directs appellant to render personal services against his will for the benefit of others, or suffer harsh penalties for refusing such service, and constitutes involuntary servitude in violation of the Thirteenth Amendment. Appellant can release himself therefrom, it is true, by rendering the service, but otherwise the services are enforced. *Clyatt v. United States*, *supra*, at 216.

We think the motions to affirm, in view of the foregoing authorities and argument, and the facts of this case, should be denied.

B.

ON MOTIONS TO DISMISS APPEAL

The appeal from the interlocutory injunction filed July 28, 1964, by the Pickrick Restaurant, a corporation, and Lester G. Maddox, its agent, was not prosecuted because the corporation closed its restaurant permanently on August 13, 1964. The injunction was made permanent on September 4, 1964, as to the operation of the Pickrick Restaurant. No appeal was taken from that final order relating to the Pickrick Restaurant.

On September 28, 1964, defendant Lester G. Maddox was the sole owner of Lester Maddox Cafeteria which he opened September 26, 1964, upon a part of the premises formerly used by the Pickrick Corporation, said real estate being the property owned by Maddox and under a long-term lease to the Corporation, which lease was terminated and cancelled by the parties on the latter date. Maddox, though previously conducting a restaurant business on these premises as President of Pickrick Corporation, did — after said injunction — conduct the same type of business on part of the same premises, but did so as an individual and not as an officer or agent of the corporation.

After hearing upon orders to show cause, Judge Hooper entered a final order on February 5, 1965, adjudging appellant in civil contempt for violating the injunction of September 4, 1964, in the subsequent operation of Lester Maddox Cafeteria. Appeal from this order to this Court was filed March 31, 1965.

The statutory provisions believed to confer on this Court jurisdiction of the appeal is Section 206 (b) of

Title II of the Civil Rights Act of 1964, 78 Stat. 245, 42 U.S.C. 2000a-5.

The only final judgment entered against appellant, as the owner of Lester Maddox Cafeteria, is the judgment appealed from in this case, and was entered after the hearing of the orders to show cause and appellant's responses thereto.

Appellant has been adjudged in civil contempt for violating a permanent injunction granted by a three-judge court, although the hearing was held and the order of contempt was entered by a single judge of that court.

In *Stratton v. St. Louis Southwestern*, 282 U.S. 10, at 16, the following language is used:

> "Nor does an appeal lie to the Circuit Court of Appeals from an order or decree thus entered by a District Judge without authority, for to sustain a review upon such an appeal would defeat the purpose of the statute by substituting a decree by a single judge and an appeal thereunder to the Circuit Court of Appeals for a decree by three judges and a direct appeal to this Court."

It was the evident intent of Congress that all challenges to the constitutionality of the application of the provisions of Title II of the Civil Rights Act of 1964 should be speedily determined by the Supreme Court. It provided for the empanelling of a three-judge court, if the Attorney General made a request that a court of three judges be convened to hear and determine the case, accompanied by his certificate that the case was of general public importance, and that an appeal from the final judgment of such court will lie to the Supreme Court. Only in the event the Attorney General should

fail to file such a request, was a designated district or circuit judge given jurisdiction to hear and determine the case.

In *Phillips v. United States*, 312 U.S. 246, 254, this language is used:

> "Had a timely appeal been taken to the circuit court of appeals the decree below could have been reviewed there, though rendered by three judges ... While this Court cannot hear the merits, it will, where the question of jurisdiction was not obviously settled by prior decisions, enforce the limitations of Section 266 by an order framed to save appellants their proper remedies ... We therefore vacate the decree and remand the cause to the court which heard the case so that it may enter a fresh decree from which appellants may, if they wish, perfect a timely appeal to the circuit court of appeals."

In *Query v. United States*, 316 U.S. 486, 491 this language is used:

> "Since there was such complete satisfaction of the conditions which made Section 266 applicable, the cause was a proper one for a three-judge court and appeal did not lie to the Circuit Court of Appeals. But a direction by us to the Circuit Court of Appeals to dismiss the appeal which the petitioners brought to it would, without more, terminote the litigation. For the time within which a direct appeal to this Court might be brought under Section 266 has elapsed. In the present circumstances, however, we think the petitioners' right to such appeal should be preserved. Cf. *Phillips v. United States*, 312 U.S. 254, 61 S. Ct. 484, 85 LED.

800. The judgment below is therefore vacated and the cause remanded to the district court for the entry of a fresh decree from which a timely appeal may be taken if petitioners so desire."

Whatever method of appeal may be ultimately held applicable in a case of this kind, it being one of first impression, we respectfully urge that the Court frame an order in the cause so as to save to appellant his proper remedy.

WILLIAM G. MCRAE
Attorney for Appellant.

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IN THE

Supreme Court of The United States

OCTOBER TERM, 1965

NO. 308

LESTER G. MADDOX,
Petitioner,

v.

GEORGE F. WILLIS, JR., ET AL.,
Respondents.

PETITION FOR REHEARING

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Comes now Lester G. Maddox, within twenty-five days after the judgment of this Court entered in the above numbered case on the 11th day of October, 1965 dismissing his appeal for want of jurisdiction, and files this his petition for rehearing in said case as authorized by Rule 58 of Supreme Court Rules.

In the case of *WALLING v. REUTER & CO.*, 321 U.S. 671, at 676-677, this Court said:

> "It is a familiar practice of this Court that where for any reason the Court may not properly proceed with a case brought to it on appeal, or where for any reason it is without power to proceed with the appeal, it may nevertheless, in the exercise of its supervisory appellate power, make such disposition of the case as justice requires.*** When it is without jurisdiction to decide an appeal which

should have been presented to another court, it may vacate the judgment and remand the case in order to enable the court below to enter a new judgment from which a proper appeal may be taken."

Petitioner urges this Court to decide that, under the circumstances of this case, justice requires that his right of appeal from the judgment of the court below be preserved by this Court in the exercise of its supervisory appellate power.

Wherefore, petitioner prays the Court to grant a rehearing in this case, and that the Court upon rehearing amend and modify its judgment of October 11, 1965, by vacating the judgment of the court below and remanding the case to that court with directions that it enter a new judgment from which petitioner may take a proper appeal to the United States Court of Appeals for the Fifth Circuit.

Respectfully,

WILLIAM G. McRAE
Counsel for Petitioner.

Address:
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Atlanta, Georgia 30307

CERTIFICATE OF COUNSEL

I, William G. McRae, counsel for petitioner, hereby certify that the above and foregoing petition for rehearing is presented in good faith and not for delay.

William G. McRae
Counsel for Petitioner

END